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Panel on Constitutional Affairs

Background Paper prepared by Legislative Council Secretariat

**Development of the political system of the
Hong Kong Special Administrative Region**

Purpose

This paper briefly summarizes the discussions so far held by Members on the development of the political system in the Hong Kong Special Administrative Region (HKSAR) and related issues since the first term of the Legislative Council (LegCo).

1999-2000 legislative session

Motion debate on 12 January 2000

2. At the Council meeting on 12 January 2000, Hon Emily LAU moved the motion "That this Council urges the Executive Authorities to conduct a public consultation as soon as possible on the relationship between the executive and the legislature, the ministerial system and the election of the Chief Executive and the Legislative Council by universal and equal suffrage" for debate. The motion was passed by the Council.

3. The progress report on the follow up actions taken by the Administration on the motion is in **Appendix I**.

Report of the Panel on Development of the Political System of the Hong Kong Special Administrative Region and motion debate on 14 June 2000

4. The Panel conducted a public consultation on the development of the political system of the HKSAR in February and March 2000. Having considered all the views received and deliberated in detail the relevant issues, the Panel tabled the Report on Development of the Political System of the Hong Kong Special Administrative Region (**Appendix II**) at the Council meeting on 14 June 2000. Chapter 6 of the Report contained the recommendations of the Panel. A motion urging the Administration to consider the views expressed by Members on the report and related matters was moved by the Chairman of the House Committee for debate at the same Council meeting. The motion was carried by the Council.

5. The progress report on the follow up actions taken by the Administration on the motion is in **Appendix III**.

2000-2001 legislative session

System of accountability of principal officials

6. One of the Panel's recommendations was that "the Government should study the proposal of implementing a more flexible contract system so that principal officials should be held politically accountable for their decisions".

7. In his Policy Address delivered in October 2000, the Chief Executive (CE) announced that the Administration would study how the accountability of principal officials at Secretaries and Directors of Bureaux rank for their respective policy portfolios could be enhanced. The Administration would consider devising a compatible system of appointment for these principal officials, setting out their powers and responsibilities and at the same time defining clearly their role in formulating and implementing government policies under the new system.

8. The Panel considered that CE's announcement of a new accountability system was a positive step responding to some of the recommendations contained in the Report on Development of the Political System of the HKSAR. To follow up the matter, the Panel conducted a public consultation exercise on the system of accountability of principal officials in March 2001. The Panel also decided to undertake a duty visit to the United Kingdom, France and Germany to study their systems of executive accountability. A delegation of the Panel will visit Edinburgh, London, Paris, Berlin and Heidelberg from 13 to 24 June 2001.

9. The Panel was concerned about the progress of the Administration's study as CE had indicated that it would be completed within one year. The Panel requested the Administration to expedite the progress of the study and prepare a document setting out its detailed proposals for public consultation. The Panel also urged the Administration to ensure that there was sufficient time for consultation with LegCo before reaching any decision.

10. At a special meeting of the House Committee held on 18 May 2001, the Chief Secretary for Administration informed Members that CE hoped to be able to provide a blueprint of a system of accountability for principal officers in his coming Policy Address. An extract of the minutes of meeting is attached in **Appendix IV**.

11. At the Panel meeting held on 21 May 2000, members were briefed on the Administration's recent visit to Australia and New Zealand to study the public sector reform. The Administration considered the experience to be useful reference for the study on the accountability system for principal officials. The Administration also informed the Panel that it would consider the system of

appointment of principal officials holding the positions of Secretaries of Departments and Directors of Bureaux, their working relationship with civil servants, and whether there needed to be any adjustment to the structure and operation of the Government. As the review was underway, the Administration was unable to provide the Panel with details at the meeting.

Political reform

12. The Panel recommended that "a review on the development of the HKSAR's political system should be undertaken by the Government. In order to gauge the views of members of the public on the matter, an extensive consultation exercise should be conducted as soon as possible. The Panel considers it of paramount importance that the Government must devise a realistic timetable for the review to ensure that there could be no question of time constraints for not being able to implement any recommendations arising from the review".

13. At the briefing by the Secretary for Constitutional Affairs (SCA) on CE's Policy Address 2000 held by the Panel on 14 October 2000, Hon Emily LAU expressed disappointment that the Policy Address had not made any concrete proposals to expedite political reform. SCA responded that the Basic Law provided the HKSAR with 10 years during which its foundation of political structure could be strengthened. The more important issues had already been covered in the Policy Address, e.g. improving the relationship between the executive and the legislature and developing a system of accountability for principal officials.

14. At a special meeting of the House Committee held on 18 May 2001, the Chief Secretary for Administration responded to Members' questions on political reform. An extract of the minutes of meeting is attached in **Appendix V**.

15. Hon Martin Lee will raise an oral question at the Council meeting on 13 June 2001 relating to implementation of Article 68 (ultimate aim of election of LegCo Members by universal suffrage) and Article 74 (introduction of Members' bills). A copy of the question is attached in **Appendix VI**.

Present position

16. As proposed by Hon Emily LAU at the Panel meeting on 21 May 2001, members agreed to invite the Administration to report on the work progress in respect of the overall review on the development of the HKSAR's political system including a timetable for the review. Members also agreed to invite academics to give views on the matter.

**Extract of minutes of special meeting on
House Committee held on 18 May 2001**

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Introductory Remarks by CS

5. As regards establishing a system of accountability for principal officials, CS said that the Administration would need to give careful consideration as this was an important matter and had far-reaching implications on the political structure and civil service system in Hong Kong. CS explained that under the present system, most principal official posts were held by pensionable civil servants. The advantages of the present system were that principal officials could focus on objective analyses of policies while maintaining high administrative efficiency and integrity. However, principal officials at the level of Secretaries and Directors of Bureaux also assumed an important role in policy formulation and implementation, and in explaining and promoting such policies following approval by the Chief Executive (CE) in Council. These principal officials therefore played a role similar to that of ministers. As such, it had become increasingly difficult for the public to accept that principal officials were politically neutral.

6. CS added that civil servants could be punished on grounds of misconduct or inefficiency under an impartial investigation system, but they, including principal officials, could not be held personally accountable for policy failures within their portfolios under the present collective accountability system. If principal officials were to be held accountable for the outcome of their policies, they should not be career civil servants, but "political appointees" and a suitable appointment system would need to be put in place, setting out clearly their powers, responsibilities and relationships with CE and with the permanent civil service.

7. CS informed Members that CE was discussing with the relevant policy bureaux and hoped to be able to provide a blueprint of a system of accountability for principal officials in his coming Policy Address. CS added that any such system should be consistent with the existing provisions in the Basic Law.

8. CS said that it was equally important to maintain the stability of the civil service structure and to preserve the principles of permanence and neutrality of the civil service, so that it would continue to serve with commitment, objectivity and with the long-term benefits of the community in mind. He pointed out that the civil service had undergone a period of transition and adjustment following the reunification in 1997. The civil service had also been working under unusual strain as a result of the Asian financial turmoil, the

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Enhanced Productivity Programme and “salary freeze”. To maintain an efficient and stable civil service, it would be necessary to sustain staff morale and ensure that the civil service would keep pace with times and be responsive to the needs of the community through, for example, staff training and development. CS further said that civil servants at different levels should also be prepared that there would be greater public demand for increased accountability on the part of the civil service. He added that a highly efficient, professional and politically neutral civil service would be conducive to a constructive working relationship with LegCo.

**Extract of minutes of special meeting on
House Committee held on 18 May 2001**

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Political reform

19. Ms Emily LAU said that direct election of LegCo Members and direct election of CE were major concerns to the public and Members. In this connection, LegCo had passed two motions in the last term urging the Administration to expedite action on the development of the HKSAR political structure and to conduct public consultation on the election of CE and LegCo by universal suffrage. She asked when the Administration would start work on the political reform.

20. CS agreed that political reform was an important issue, although according to public opinion surveys conducted regularly by the Administration, the public was much more concerned about other livelihood issues, such as housing, the economy and transport matters. He said that the Basic Law had already set out the blueprint for constitutional developments, and the ultimate objective of electing all LegCo Members by universal suffrage. CS said that the Administration would proceed cautiously on this important subject, having regard to the experience of the coming election of CE in 2002 and the election of LegCo in 2004. He believed that Hong Kong should develop a model which suited its conditions and which had widespread support of the community. He added that the establishment of an accountability system for principal officials would also throw light on the community's expectations and aspirations of the future political structure.

21. Ms Emily LAU expressed dissatisfaction that the Administration had not responded seriously to the motions passed by LegCo on political reform. She questioned the Government's respect for LegCo and Government's sincerity in co-operating with Members. CS responded that the Administration would need time to examine the implications of various options for constitutional development as well as to gauge public views. He added that some people had already criticised the Government for trying to tackle too many problems at once and complained that too many different reforms had been introduced in the past few years.

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22. Mr LAU Chin-shek pointed out that the former CS had said at the Asian Society luncheon in April 2001 that Hong Kong should not delay public debate on the pace of democratic reform. Mr LAU asked whether CS agreed that there was urgency in introducing universal suffrage in the HKSAR. He further enquired about the time-table for introducing political reform and whether there would be public consultation.

23. CS responded that as compared with developed countries where their political reforms took decades or even centuries to evolve, the HKSAR had to work within a relatively short time-frame to develop a mature constitutional framework. He stressed that a prudent and step-by-step approach was required in view of the far-reaching implications and the need to listen to different views in the community. In this regard, we could not afford to make serious mistakes or to overturn changes repeatedly. Constitutional changes could only succeed with widespread public support. He said that the Administration took constitutional review as a continuous commitment in the months and years ahead, having regard to the milestone events of the election of the CE in 2002 and the election of LegCo in 2004, in the lead up to 2007. The public and LegCo views would comprise the main ingredients of this continuous review.

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Legislative Council
Panel on Constitutional Affairs

**Report on the development of the political system
of the Hong Kong Special Administrative Region**

June 2000

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- I : Terms of reference of the Panel**
- II : Membership list of the Panel**
- III : A summary of views received**
- IV : An overall comparison table on eight topics covered in the Research Study on Systems of Government in Some Foreign Countries**

CHAPTER 1

INTRODUCTION

Purpose of report

1.1 This report summarizes the main issues considered by the Panel on Constitutional Affairs in respect of the development of the political system of the Hong Kong Special Administrative Region (HKSAR).

Terms of reference of the Panel

1.2 The Panel was formed by a resolution of the Legislative Council (LegCo) on 8 July 1998 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

Membership of the Panel

1.3 The Panel comprises 12 members. Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Background

1.4 One of the main issues of concern of the Panel in the current legislative term is the development of the political system of the HKSAR. Despite the repeated requests of the Panel to discuss the topics of "Direct elections" and "Ministerial system of government", the Administration considered that there was no urgency to do so.

1.5 The Panel had discussed the timing for conducting a review on HKSAR's political system, having regard to the Chief Executive's remark made in the 1999 Policy Address that "I hope that by 2007, a mature view will have emerged in the community on the development of the political structure". The Administration advised that there was ample time for the HKSAR to develop "a mature view" which should emerge by 2007 the latest. If such a view emerged well before 2007, the

Administration would take appropriate action taking into account the prevailing circumstances and the aspirations of the community. As a first step, the Administration would study the different systems of government adopted in other parts of the world with a view to working out a constitutional model that was suitable to the circumstances of the HKSAR. As the Administration was heavily engaged in making practical arrangements for the 2000 LegCo election, the study could only commence after the election.

1.6 At the Question and Answer Session held in the Council on 13 January 2000, the Chief Executive (CE) made a statement on the executive-legislature relationship. Some of the relevant comments are set out below -

On executive-legislature relationship

"...[the situation] is indeed much better than what I have described. In the past year or so, major bills were supported and passed by the Legislative Council."

On the question of a ministerial system

"The ministerial system has been a subject of discussion in Hong Kong for years, but there has been no consensus on the definition of ministerial system. Some suggested to implement a ministerial system under which Legislative Council Members shall replace all Policy or Bureau Secretaries in the Civil Service. This is certainly an overhaul of the political system, but I do not think Hong Kong has reached such a stage ready for this development."

"...I will not adopt a ministerial system... Certainly, government departments will also recruit talents from the community if the practical circumstances so warrant, and it is just normal for the Government to do so."

"The design of Hong Kong's political structure in the Basic Law manifested and underscored an executive-led feature. This is reflected in the provisions on the spirit of an executive-led system, on the powers and functions of the executive and the legislature, and on their inter-relationship...Such provisions are aimed to retain the distinctive feature of an executive-led political system and maintain an executive efficiency in Hong Kong with a view to safeguarding prosperity and stability in Hong Kong."

On political development

"...we must allow time for the present political system to have a searching and maturing process. The Basic Law has laid down a 10-year timetable which enable us to consider the next step forward in the light of our political experience, and we must proceed in a progressive order so as to ensure acceptance from all sectors of the community."

1.7 At the Council meeting on 12 January 2000, Hon Emily LAU moved a motion which read - "That this Council urges the Executive Authorities to conduct a public consultation as soon as possible on the relationship between the executive and the legislature, the ministerial system and the election of the Chief Executive and the Legislative Council by universal and equal suffrage". The motion was passed by the Council.

1.8 On 17 January 2000, the Panel discussed how to follow up on Hon Emily LAU's motion, and in view of the Government's position after the passage of the motion debate, made the following decisions -

- (a) The Panel would conduct a public consultation on the "Development of the HKSAR's political system" and present a report to the Council;
- (b) The Research and Library Services Division of the LegCo Secretariat would conduct a research study on systems of government in some foreign countries; and
- (c) A motion debate on the subject would be held before the end of the current legislative session.

Public consultation

1.9 The Panel also agreed that public views should be sought on the following specific issues -

Ministerial system

- (a) What should be the respective roles of the executive and the legislature and their structural and operational inter-relationship;

- (b) Should principal officials be politically appointed or should they continue to be permanent civil servants and other persons appointed on contract;
- (c) How should principal officials individually and the executive collectively be held accountable to the legislature;

Election by universal suffrage

- (d) When should the CE be elected by universal suffrage and how;
- (e) When should all LegCo Members be elected by universal suffrage and how;

Others

- (f) Any other related issues, e.g. referendum, constitutional assembly/convention, regulation of political parties, etc; and
- (g) Relevant experiences in foreign countries relevant to the discussion.

1.10 On 24 January 2000, an advertisement was placed in one Chinese and one English local newspaper to invite written submissions from the public on the issues identified for public consultation. In addition, the Panel invited academics, the legal professional bodies and the Hong Kong Human Rights Monitor to give views to the Panel.

1.11 The Panel received views from a total of 15 organizations and 16 individuals. These included the Hong Kong Bar Association, political parties, non-governmental organizations, academics and members of the public. Among them, 7 organizations and 6 individuals appeared before the Panel at three meetings held in February and March 2000. A summary of the views received is in **Appendix III**.

1.12 During the consultation period, the Panel also took note of views expressed through the media, including editorials and articles.

Research Study on Systems of Government in Some Foreign Countries

1.13 On 17 April 2000, the Panel was briefed on the Research Study on Systems of Government in seven countries: the United States, the United Kingdom, France, Germany, Japan, New Zealand and Singapore. An overall comparison table on eight topics covered in the Study is in **Appendix IV**.

Deliberation of the Panel

1.14 The Panel held three meetings in April and May 2000 to deliberate the relevant issues. In view of the complexity of the issues involved and the limited time available for the Panel to complete its task within this legislative session, members agreed that the Panel report should reflect the main issues considered and its preliminary recommendations and consensus, if any, on particular issues. The relevant Panel could follow up the matter in the next legislative session.

CHAPTER 2

SYSTEM OF GOVERNMENT

Overseas experience

2.1 The Panel has noted the systems of government in some overseas countries.

Roles of the executive and the legislature

2.2 In a presidential system such as that in the United States (US), the President is Head of Government and possesses the powers to oversee the executive departments, to appoint officials and judges and to recommend legislation. The US Congress possesses legislative powers, the powers to approve budget, to scrutinize the executive and to propose constitutional amendment. In terms of the inter-relationship of the President and the Congress, the President has no power to dissolve the Congress. The President and the Cabinet do not hold collective responsibility to the legislature as in the case of a parliamentary system of government. Under a system of checks and balances, the President may influence the law making process by legislative recommendations and veto power. Congress may remove the President from office by impeachment.

2.3 In a parliamentary system, exemplified by France, the United Kingdom, Japan, Germany, New Zealand and Singapore, the Head of Government and Cabinet usually determine and direct the policy of the nation and are collectively and individually responsible to the parliament. Parliaments in these countries adopt statutes, enact legislation, control taxation and public expenditure, and oversee government administration. Initiation of bills is usually restricted if the bills to be introduced involve additional public expenditures or have a negative impact on government revenue. Parliaments monitor the government through questions, select committees and other similar commissions of inquiry. Checks and balances are exercised through the power of dissolution of Parliament by the Head of State or Head of Government on the one hand, and the passage of a vote of no-confidence in the Government by Parliament on the other hand. When a vote of no-confidence is passed by Parliament, the Prime Minister and the whole Cabinet are expected to resign.

Appointment of the executive

2.4 In the US, heads of various executive departments are chosen by the President and they form his Cabinet. They are politically appointed and are expected to resign when the President leaves office.

2.5 In France, Cabinet Ministers are selected by the Prime Minister who recommends them for appointment by the President of the Republic. They are chosen on the basis of party representation in the National Assembly and circumstances surrounding the presidential campaign. Some Ministers have come from the Senate. All Ministers have to give up their parliamentary seats once they take up posts in the executive branch. All Ministers will have to resign if Parliament passes a motion of censure against the Government.

2.6 In the UK, Cabinet Ministers must be Members of Parliament. They are not independent of the legislature. Cabinet Ministers are appointed and dismissed by the Prime Minister.

2.7 In Japan, at least one half of the Cabinet Ministers must be chosen from the Diet, i.e. the House of Representatives and the House of Councillors. The rest can be whoever the Prime Minister chooses. By convention, almost all Cabinet members are members of the Diet. Cabinet Ministers resign along with the Prime Minister if the House of Representatives passes a vote of no-confidence or rejects a confidence vote.

2.8 Germany has a bicameral legislature : the two houses are the Bundestag and Bundesrat. Federal or Cabinet Ministers are not required to be members of the legislature, although they are usually members of the Bundestag. Cabinet Ministers are appointed and dismissed by the President upon the proposal of the Chancellor. When the Chancellor loses his office, Ministers will have to resign. State Secretaries and Under-Secretaries of State in the Ministries, senior civil servants in the Foreign Office and in the security services and the President of the Federal Criminal Police Office are politically appointed civil servants, who hold office for the exercise of which they must be in agreement with the fundamental political aims of the Government. The office can be created or cancelled at any time without stating reasons. Of about 130 000 civil servants, about 400 are politically appointed civil servants.

2.9 In New Zealand, all Ministers must be Members of Parliament. They are appointed by the Governor-General on the advice of Prime Minister.

2.10 In Singapore, Cabinet Ministers are appointed from among Members of Parliament by the President on the advice of the Prime Minister.

Accountability of the executive to the legislature

2.11 In the US, Cabinet members are appointed by the President and do not hold any collective responsibility to Congress. The Senate has the authority to confirm presidential appointments of senior officials and ambassadors of the federal government. The House of Representatives has the sole right to bring charges of misconduct that can lead to an impeachment trial of federal officials. The Senate has the sole power to try impeachment cases and to determine whether or not officials are guilty. A finding of guilt removes a federal official from public office.

2.12 In France, ministerial responsibility is collective and the Government is collectively responsible to Parliament. Accountability of the executive is ensured through the possibility of ousting a Government by two distinctive procedures : the National Assembly may on its own initiative move a motion of censure, or the Prime Minister may "provoke" a censure motion. In either case, if the motion of censure passes, the Government must resign.

2.13 In the UK, individual ministerial responsibility is governed by two rules: the competence rule which holds ministers answerable to Parliament for every action undertaken by their department's civil servants, subject to whether or not they have personal knowledge of the errors committed by their civil servants; and the morality rule which holds that the Ministers might need to resign if they have done something morally unacceptable. Collective responsibility of Ministers to Parliament in the UK is governed by the confidence rule, which requires a government to resign if it cannot command majority support from the House of Commons. In addition, a resolution was passed by Parliament in 1997 to require Ministers to provide accurate information to Parliament, failure of which would result in resignation of Ministers. A similar system of ministerial accountability exists in New Zealand and Singapore, although there is no resolution similar to the one passed by the UK Parliament in 1997 mentioned above in these two countries.

2.14 In Japan, Cabinet responsibility is collective. When the House of Representatives passes a no-confidence resolution or rejects a confidence resolution, the Cabinet resigns en bloc, unless the Prime Minister dissolves the House of Representatives within ten days. If a Member of the House of Representatives wishes to introduce a vote of confidence or no-confidence in the Cabinet, he has to submit a draft of the resolution with reasons attached to the Speaker of the House of Representatives and the draft must be signed by at least 50 out of 500 members.

2.15 In Germany, the Constitution provides for the basis of ministerial responsibility. Article 65 stipulates that the Federal Chancellor shall determine and be responsible for general policy guidelines. Within the limits set by these guidelines each Federal Minister shall run his department independently and on his own responsibility. As the Federal Chancellor is the only member of the Government (Cabinet) required to be elected by Parliament, he alone is accountable to it. Federal Ministers are only accountable to the Chancellor, and the notion of collective responsibility is not well developed. Although the Federal Cabinet decides on differences of opinion between Ministers, channels for the Federal Cabinet to be accountable to Parliament are few.

The local situation

2.16 The Panel has considered the problems in the executive-legislature relationship as well as the legal aspects and desirability of implementing a ministerial system in Hong Kong.

Executive-legislature relationship and ministerial system

2.17 Of the views received, members have noted that some consider that Hong Kong's political structure is a system of checks and balances based on the principle of separation of powers. This is manifested in the various articles of the Basic Law (BL) stipulating the powers and functions of the Chief Executive (CE), the Government of the HKSAR and LegCo, and their inter-relationship. While CE is to lead the Government (BL 48), the Government of the HKSAR must abide by law and accountable to LegCo (BL 64). For a legislation to take effect, it requires the assent of CE (BL 76). While CE has the power to dissolve LegCo under certain circumstances (BL 50 and 51), LegCo also has the power to impeach CE (BL 73(9)), and CE is required to resign if he twice refuses to sign a bill passed by LegCo (BL 52).

2.18 The Panel has also noted the views of those who consider that at the heart of the public debate about whether Hong Kong should introduce a ministerial system of government is the relationship between the executive and the legislature. Although the executive and the legislature have managed their differences by engaging in the usual political give-and-take, the following problems are likely to be aggravated. First, with further democratization of LegCo, the executive would find it increasingly difficult to maintain an executive-led style of governance without risking its political credibility if it does not have institutionalized political support and higher degree of legitimacy. Secondly, both LegCo Members and senior government officials are frustrated about the existing system. Senior government officials, as civil servants who formulate and implement government policies, have to lobby hard for the support of LegCo in order for the Government to operate. As for LegCo Members, their role in the process of policy formulation and initiation of legislation is restricted under the BL. Thirdly, the community is increasingly concerned about the effectiveness of the accountability of the executive and the fact that no senior civil servants had been sanctioned for the recent serious blunders in the civil service.

Legal aspects

2.19 The Panel has noted that for those who oppose to the implementation of a "ministerial system" or a "party government" system, there are a number of concerns. First, the proposal would contravene the BL as the method for selecting the CE is provided for in Article 45 and Annex I of the BL. Secondly, both systems are meant for the sovereign states and should not be adopted by an SAR of the People's Republic of China. Implementation of the proposal might give an impression that the HKSAR is an independent or semi-independent political entity, thus threatening the principle of "one country, two systems". Furthermore, the Chinese system of government is a unitary system as opposed to a federal system adopted in some other countries. A "ministerial system" or a "party government" system can only be practised under the latter system of government.

2.20 The Hong Kong Bar Association has expressed the view that while the BL has not prescribed any system of government for the HKSAR, there is "a legal principle that what is not prohibited by the law is legal, and the BL does not deviate from this principle". The Legal Adviser has reminded members that when applying that principle in the context of the BL both the letter and spirit of the provisions in the BL are relevant. Moreover, under BL 11, the systems and policies practised in the HKSAR have to be based on the provisions of the BL.

Desirability

2.21 The Panel has considered whether a ministerial system with features such as the need for the minister to account for the actions of their departments to the legislature and the need for a minister to resign if serious errors had been committed in his department should be implemented. Some members hold the view that such a system might not be a solution to all the problems in the existing system. However, other members consider that a ministerial system would be conducive to improving the accountability of the executive and the executive-legislature relationship. In addition, a system under which ministers are appointed to take on political responsibility and accountability could help achieve a relatively more stable government, as experienced by some western countries.

2.22 The Panel has noted that the political systems in many democratic countries have to take into account their own historical background in finding ways of balancing efficiency, effectiveness, political stability, accountability and representativeness. Both the western democratic systems and the HKSAR's existing system have many problems that remain to be resolved. The Panel has agreed that in the long run, the HKSAR should develop its own system of government which would best suit its circumstances.

CHAPTER 3

PROPOSALS TO IMPROVE EXECUTIVE-LEGISLATURE RELATIONSHIP

3.1 The Panel has noted and considered a number of proposals put forward to improve the relationship between the executive and the legislature as an interim measure.

Some proposals

3.2 Members have considered the following -

- (a) Restrictions on the introduction of bills by LegCo Members should be relaxed or removed

Article 74 of the Basic Law (BL) prescribes the circumstances under which LegCo Members may introduce bills. Some members support the proposal as it would facilitate LegCo Members to contribute to policy formulation through legislative process.

- (b) Bicameral voting system on motions and bills introduced by LegCo Members should be abolished

Members note that Annex II of BL provides for the procedures for voting on bills and motions in LegCo. If there is a need to amend the provisions after 2007, such amendments must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of the Chief Executive (CE), and shall be reported to the Standing Committee of the National People's Congress for the record.

- (c) Members of political parties supportive of government should be allowed to introduce important bills relating to government policy so that they can win credit for supporting the Government and can claim to have delivered to the electorate

The Panel notes that under Article 74 of the BL, the written consent of the CE is required before bills relating to government policies are introduced by LegCo Members.

(d) Constitutional conventions, customs and traditions should be developed

Some members agree that the feasibility of developing parliamentary customs and traditions, or constitutional conventions to enhance accountability of the executive to the legislature should be developed.

(e) The role, appointment, rules of collective responsibility and confidentiality of Executive Council (ExCo) Members and their relationship with bureau secretaries should be reviewed

Under Article 55 of BL, ExCo Members should be appointed by the CE from among the principal officials of the executive authorities, LegCo Members and public figures. Some members agree to the proposal that more LegCo Members should be appointed to ExCo.

On whether there should be overlapping membership between ExCo and LegCo, a member points out that this is not prohibited under the BL. It is a matter for the LegCo Member concerned to decide whether he should accept the appointment as an ExCo Member and hence be bound by the rules of collective responsibility and confidentiality.

(f) CE should appear before LegCo on a more frequent basis

Under the BL, Article 43 provides that CE shall be accountable to the Central People's Government and the HKSAR. Article 64 provides that the Government of the HKSAR must be accountable to LegCo.

A few members point out that as it is not certain whether the HKSAR Government (i.e. the executive authorities) include the CE, it is doubtful whether the arrangement for CE to appear before LegCo to answer questions is the appropriate way to manifest the requirement of the BL that the HKSAR Government should be accountable to LegCo. They consider that the Chief Secretary for Administration, instead of the CE, should appear before LegCo to explain policies and answer queries. For example, in France, the Prime Minister appointed by the President is the one answerable to the Parliament. Some members are of the view that given that CE has to be accountable to the HKSAR, one of the obvious means of putting that into practice is to for him to appear before LegCo to answer questions put to him in his capacity as CE.

- (g) Membership of major policy advisory committees of the Government should include LegCo Members
- (h) The Chief Secretary for Administration should have regular meetings with leaders of major political parties

Some members express support to these two proposals as discussions at an early stage of policy formulation would help avoiding or reducing differences between the executive and legislature and securing the support of LegCo on major policy issues.

- (i) A system of appointment of principal officials on political contracts by the second term of CE and a system of sanction or removal of principal officials should be introduced

Members' deliberations on this proposal are summarized below.

The proposal of implementing a flexible contract system for appointing principal officials

3.3 Of the above proposals, the Panel has discussed at length whether a flexible contract system of appointment of principal officials should be implemented by the second term of the CE and whether a principal official on contract could be removed from office without compensation when he commits a serious mistake in the formulation or implementation of government policy.

Legal aspects

3.4 Members agree that it is important to consider whether any proposals relating to the implementation of a contract system for appointing principal officials may contravene the BL. In the light of the opinions expressed by the Hong Kong Bar Association and the Legal Adviser's view on the legal aspects of this issue, members have examined in some detail provisions in the BL on and relevant to the appointment of public servants to see if they contain any expressed or implied prohibitions against appointing principal officials under a contract system.

BL103

3.5 BL 103 stipulates that "The appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, shall be maintained...".

3.6 Some members point out the proposal should be considered in the context of the constraints imposed by the reference to "Hong Kong's previous system of... should be maintained" in BL 103; and whether the proposal would be inconsistent with the principle and spirit of BL 103. It is also not clear as to whether the term "public servants" covers "principal officials" referred to in BL 48(5) and 61.

3.7 Other members are of the view that under the principle of a high degree of autonomy of the HKSAR, BL 103 should be interpreted with flexibility to ensure that a high degree of autonomy is maintained in the system of appointing public servants. In addition, the fact that it is already the case a small number of principal officials from outside the civil service have been appointed is highly relevant.

BL 48(5)

3.8 BL 48(5) stipulates that CE has the power "to nominate and to report to the Central People's Government for appointment the following principal officials : Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People's Government the removal of the above-mentioned officials".

3.9 Some members do not agree that the proposal is inconsistent with BL 48(5) which provides that principal officials are appointed by the Central People's Government (CPG). They point out that BL 48(5) empowers CE to nominate for appointment as well as to recommend for removal of principal officials to the CPG. It is only a matter of political decision of the CE as to whether the proposal should be implemented across the board.

Desirability

3.10 Some members consider that as opposed to the existing system of permanent and pensionable establishment which provides for a form of security of tenure of office, a contract system would be more flexible and effective in achieving the objective of enhancing greater accountability of the Government. The attitude of Government officials towards accountability would be different if they were to face a greater risk of termination of appointment under a contract system. The proposal may be regarded as an interim arrangement before the introduction of a more democratic system of government.

3.11 Other members caution that proposals introducing fundamental changes to the public service appointment system should be carefully considered. A contract system with removal of office as a sanction for the purpose of enhancing accountability of principal officials is unprecedented in Hong Kong. Apart from the possible unsettling effect on the morale of the civil service, there are also arguments that it would not be fair to hold a principal official accountable for a policy failure under a system where policy formulation and implementation is a matter of collective responsibility.

3.12 The Panel notes that in the British parliamentary system, the whole structure of political accountability of the executive to the legislature is built upon constitutional conventions. Although constitutional conventions are not law, a breach of such conventions could lead to serious political consequences.

3.13 Members agree that the proposal of implementing a flexible contract system for appointing principal officials should be given further consideration. The feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies should also be explored.

Term of office of principal officials

3.14 Members have also discussed whether the term of office of principal officials appointed on contract should be the same as that of the CE.

3.15 Some members consider that the term of office of principal officials should coincide with that of the CE, thus avoiding a difficult situation faced by the officials in case the new CE's political beliefs are different from that of the outgoing CE. Other members consider it undesirable for the CE and principal officials to have the same term of office as this could result in a personal subservient relationship which might discourage the principal officials from offering advice on policy matters in an independent and impartial manner.

Source of principal officials

3.16 Another aspect of the proposal discussed is whether appointees can come from both the civil service and private sector if a contract system for appointment of principal officials is implemented.

3.17 Some members consider that the appointment of people from the business community should better be avoided because of possible conflict of interests. Other members consider that an open mind should be kept on the issue. Otherwise, it would end up in a situation where only ex-civil servants would be appointed.

3.18 Members note that according to the result of the survey conducted by the Research and Survey Programme of the Lingnam University in January 2000, the majority of the respondents supports that persons responsible for formulation of policies should resign if they have committed serious policy mistakes. They also support the appointment of civil servants and persons not affiliated with political parties to be principal officials.

CHAPTER 4

ELECTION OF THE EXECUTIVE

4.1 The Panel has considered the question of when the Chief Executive (CE) of the HKSAR should be elected by universal suffrage, and notes the arrangements in some overseas countries.

Overseas experience

4.2 In the United States (US), the President, the Head of State, is elected indirectly by the people. Presidential election is held through a series of complex elections, namely, separate elections of presidential candidate by political parties and the election of Presidential Electors who are bound by their pledge to vote for a certain presidential candidate. These Presidential Electors are usually important party leaders or prominent party members.

4.3 In France, the President of the Republic is elected directly by the people through an absolute majority system. Most presidential candidates have been Prime Ministers before and belong to one of the parties which is represented in Parliament. The Prime Minister is selected and appointed by the President of the Republic after an election is held for the National Assembly. The Prime Minister is usually chosen on the basis that he can win the support of a parliamentary majority.

4.4 In the United Kingdom (UK), New Zealand and Japan, the Head of State is the Monarch who inherits the throne.

4.5 The Prime Minister of UK is an elected Member of Parliament who is asked by the Monarch to form a government on the basis of his ability to command a majority in the House of Commons. He is normally the leader of the majority party; sometimes, the minority party can influence the choice.

4.6 The Prime Minister of New Zealand is appointed by the Governor-General, who, by convention, accepts the outcome of the electoral process and subsequent discussions between political parties as to which party or group is to govern the country and lead the government. The Prime Minister is usually the leader of the majority party.

4.7 In Japan, the Prime Minister is constitutionally required to be a member of the Diet. He is usually the president of the majority party. The Prime Minister is not elected directly by the people as such but is designated from among the Diet members by a resolution of the Diet. In effect, he is elected by a simple majority of members in both Houses of the Diet.

4.8 In Germany, the Federal President is elected by the Federal Convention, a constitutional body which convenes for this purpose. It consists of members of the Bundestag and an equal number of members elected by state parliaments. A presidential election may run as many as three ballots; a majority is needed to elect a candidate on the first and second ballots, but a plurality suffices for election on the third ballot. The Chancellor is not required to be a member of the legislature. The Chancellor candidate, who is usually the leader of the party, is nominated by each party before the election. As a party rarely gains an absolute majority, political parties negotiate immediately after the election to return their preferred Chancellor candidate. The President then proposes the Chancellor candidate to the Bundestag, which elects without debate the Chancellor.

4.9 In Singapore, the President is directly elected by the citizens of Singapore. The presidential candidate must satisfy the Presidential Elections Committee (PEC) that "he is a person of integrity, good character and reputation". The PEC consists of the Chairman of the Public Service Commission, a member of the Presidential Council for Minority Rights, and the Chairman of the Public Accountants Board. The President is conferred by the constitution with the power to appoint a Member of Parliament as Prime Minister, who in the judgement of the President, is likely to command the confidence of a majority of the Members of Parliament.

The local situation

Election of the Chief Executive by universal suffrage

Legal aspects

4.10 Article 45 of the Basic Law (BL) stipulates that the method for selecting CE shall be specified in the light of actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

4.11 Annex I of the BL prescribes the method for the selection of CE. If there is a need to amend the method for the terms subsequent to 2007, such amendments must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE, and shall be reported to the Standing Committee of the National People's Congress for approval.

4.12 Any proposal to change the method of selecting the CE prior to 2007 would involve amending the Basic Law.

Desirability

4.13 Of the views received by the Panel, many of those who support the election of the second term CE in 2002 by universal suffrage believe that this would enhance the executive-legislature relationship. A directly-elected CE will possess even greater political legitimacy than a directly-elected LegCo.

4.14 For those who hold opposing views, they consider that democratic development should be implemented progressively in accordance with the timetable of BL in order to preserve the long term prosperity and stability of HKSAR. There is also the view that the question of how CE should be selected after 2007 is an appropriate subject for a public referendum, in view of the short history of the election of the CE.

CHAPTER 5

ELECTION OF THE LEGISLATURE

5.1 The Panel has considered the question of when all LegCo Members should be elected by universal suffrage.

Overseas experience

5.2 Members note that in the United States (US), separate elections are held for the House of Representatives and the Senate. 435 members of the House of Representatives are elected from a single member district system through universal suffrage. Every state, county, city or ward is divided into voting district on the basis of equal population size. The Senate is composed of 100 members, two from each state. Senators are elected directly by the inhabitants of the states for a six-year term.

5.3 In France, 577 Deputies of the National Assembly are elected directly by the people under a single-member constituency system for a term of five-year. The 321 Senators are elected indirectly by electoral colleges. Senators are elected for nine years, with one-third of the Senate elected every three years.

5.4 In the United Kingdom, the House of Commons has 659 members, each elected for one geographical constituency for a maximum of five years. Civil servants must resign from the service if they wish to stand for election to Parliament. The first-past-the-post system is used and under this system, the candidate who obtains the highest number of votes in an election is elected. Of the 660 members of the House of Lords, 548 are life peers, 75 are elected by hereditary peers amongst themselves, 15 are hereditary peers elected by the whole House of Lords, 2 hereditary peers are appointed, and 26 are bishops. Prior to the enactment of the House of Lords Act 1999, members of the House of Lords were not elected. There is no term fixed for a member of the House of Lords.

5.5 In Japan, members of both the House of Representatives and the House of Councillors are elected by universal suffrage. Of the 500 members of the House of Representatives who are elected for a four-year term, 300 are elected from single-seat districts and the other 200 are determined by proportional representation. Members of the House of Councillors are elected at the national and prefectural levels. The term of office is six years, and half of the members are elected every three years.

Each voter casts two ballots, one under the proportional representation system and one in the electoral district to which the voter belongs.

5.6 In Germany, the Bundestag is elected every four years and consists of at least 656 members, half of whom are elected in the constituencies, and the other half elected by proportional representation from lists of candidates drawn up by the political parties in each federal state. The Bundesrat is composed of 69 members appointed by the 16 state governments. The term is not fixed, depending on the office of the state governments. Simultaneous membership in the Bundesrat and Bundestag is not allowed.

5.7 In New Zealand, the Parliament consists of 120 Members of Parliament returned from a Mixed Member Proportional Representation electoral system. There are two categories of members : Members belonging to the first category are returned by a first-past-the-post system, which consists of 61 General electorates and six Maori electorates. Members of the second category are drawn from party lists. Members are elected for a three-year term. Each voter has two votes - one for a member to represent an electorate and the other for a party which the voter prefers.

5.8 In Singapore, there are three categories of members of the Parliament. The 83 Elected Members are directly elected every five years from single-member constituencies and Group Representation Constituencies; the three Non-Constituency Members are appointed every five years from among unsuccessful opposition candidates who have had the highest percentage of votes in their respective constituencies; and up to nine Nominated Members are appointed for two years by the President on the recommendation of a Special Select Committee of Parliament.

The local situation

Election of LegCo Members

Legal aspects

5.9 Article 68 of the Basic Law (BL) provides for the election of all LegCo Members ultimately by universal suffrage. The composition of the second and third terms of LegCo is set out in Annex II of the BL.

5.10 If there is a need to amend the method for forming LegCo after 2007 under Annex II of the BL, such amendments must be made with the endorsement of a two-thirds majority of all LegCo Members and the consent of CE, and shall be reported to the Standing Committee of the National People's Congress for the record.

5.11 Any proposal to expedite the pace of democracy prior to 2007 would mean changing the composition of the third term LegCo election in 2004. Such a proposal would involve amending the BL.

5.12 The BL does not stipulate any specific timing of making the amendments mentioned in Annex II to the BL. However, such amendments can only take effect after 2007, provided that they are made in accordance with the procedures and requirements laid down in the relevant provisions of the BL.

Desirability of election of all LegCo Members by universal suffrage

In 2000 or 2004

5.13 Of all the views received, members note that those who consider it desirable to introduce election of all LegCo Members by universal suffrage in 2000 or 2004 have raised the following points -

- (a) According to the United Nations Human Rights Committee (UNHRC), the electoral system for LegCo does not comply with the International Covenant of Civil and Political Rights (ICCPR). The failure to introduce universal suffrage nearly 30 years after the extension of the ICCPR to Hong Kong has been condemned as a flagrant breach of the Covenant by the UNHRC. It denies Hong Kong people a right to equal and meaningful participation in government, which people in most of the developed world take that for granted;
- (b) The functional constituency election introduced in 1985 gives undue weight to the "elitist" sectors and discriminates among voters on the basis of property and functions; and
- (c) There is public support as indicated in results of surveys including those conducted by the Democratic Party in 1999 and the Research and Survey Programme of the Lingnan University in January 2000. Results

of the former survey indicated that 65% of the respondents were in support of the election of LegCo Members by universal suffrage in 2000. Majority of the respondents to the latter survey supported the election of all LegCo Members by universal suffrage as soon as possible.

After the third term of LegCo (2004 - 2008)

5.14 A small number of the views received consider that election of all LegCo Members by universal suffrage should be implemented after the third term. Apart from stating that election of functional constituencies is contrary to the international obligation of the HKSAR under the ICCPR, the Hong Kong Bar Association has also made the following points in support of its views -

- (a) Election of LegCo Members by geographical constituency election was first introduced to Hong Kong in 1991. By the third term of LegCo, Hong Kong should have 17 years of experience in direct election. This has not included experience in direct election of members of the District Boards which went back to 1982, and direct election of members of the Urban Council which dated back to 1887;
- (b) Article 68 of the Basic Law requires a "progress" in the formation of LegCo towards election of all LegCo Members by universal suffrage. To freeze the composition of LegCo as that in its third term after 2008 will be contrary to the Basic Law; and
- (c) The ultimate aim of election of all LegCo Members by universal suffrage must be achieved well before the end of the 50-year period guaranteed by the Basic Law.

5.15 Some of the views received by the Panel prefer a gradual approach in bringing about changes to the system for election of all LegCo Members. Their views are summarized below -

- (a) The blueprint set out in the BL should be followed in order to safeguard the prosperity and stability of the HKSAR. A review on the pace of democratization should be conducted in 2007 and any concrete proposals could be made after the community has arrived at a consensus on the matter; and

- (b) With election of LegCo by universal suffrage, those paying majority of the taxes would not have their representation in LegCo guaranteed. Democratization should take an evolutionary rather than a revolutionary process, in order to achieve both democracy and economic prosperity.

Members' views

5.16 Some members are in support of election of all LegCo Members by universal suffrage as soon as possible. They point out that the perception that direct election would lead to incessant demands from the grass-root sectors for better welfare benefits and higher taxation has not been borne by experience in other political systems. In fact, politicians are mindful that a right balance should be struck between different sectoral interests. It is necessary for a political party in power to have both political responsibility and accountability. If it fails to implement policies which could meet the long term interest of the community at large, it would face the risk of being voted out of power at the next election. Direct election simply guarantees the rights of citizens to equal and meaningful participation in government.

Referendum

5.17 A number of the views received by the Panel consider that the people of Hong Kong should be given an opportunity to decide on the question of election of all LegCo Members by universal suffrage, and the most appropriate means to do so is by way of a public referendum. The referendum should also decide on the timetable of achieving the ultimate aim of universal suffrage as set out in the BL.

Composition of LegCo

5.18 The Panel has taken note of a few proposals to increase the number of directly elected seats by expanding the size of the legislature or to return a democratically elected LegCo by adopting alternative electoral systems. These proposals aim to allay the concerns of some sectors of the community about direct election and to provide a greater chance for elite members of the community to be elected to LegCo.

5.19 Some members have doubts about whether the proposals would achieve the desired purpose so long as direct election is perceived as only benefiting the grass-roots at the expense of the business community. A member objects to any proposals to retain the functional constituency system. Some members consider that any

proposal to expand the size of LegCo could be considered in the context of the overall review of the political structure of the HKSAR, taking into account that the dissolution of the two municipal councils has now resulted in a two-tiered structure of representative government.

CHAPTER 6

RECOMMENDATIONS

6.1 After having considered all the views received and deliberated in detail the relevant issues, the Panel recommends that a review on the development of the HKSAR's political system should be undertaken by the Government. In order to gauge the views of members of the public on the matter, an extensive consultation exercise should be conducted as soon as possible. The Panel considers it of paramount importance that the Government must devise a realistic timetable for the review to ensure that there could be no question of time constraints for not being able to implement any recommendations arising from the review.

6.2 The Panel further recommends that as part of the review, the Government should -

- (a) explore the feasibility of developing constitutional conventions under which principal officials shall voluntarily resign as a result of having committed serious mistakes in the formulation or implementation of government policies;
- (b) study the proposal of implementing a more flexible contract system so that principal officials may be held politically accountable for their decisions;
- (c) examine the merits of developing conventions conducive to enhancing accountability of the executive to the legislature, e.g. the appearance of the Chief Executive before LegCo on a more frequent basis to answer questions on important issues and the meeting of the Chief Secretary for Administration with leaders of political parties on a regular basis; and
- (d) study different systems of government and make recommendations on a system that would be most suitable to the circumstances of the HKSAR and acceptable to the community as a whole.

Appendix I

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the HKSAR Government and the Central People's Government and other Mainland authorities, electoral matters and district organisations.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

**Legislative Council
Panel on Constitutional Affairs**

Membership List

Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon Ambrose LAU Hon-chuen, JP
Hon SZETO Wah

Total : 12 Members

Total : 12 Members

Date : 31 December 1999

LegCo Panel on Constitutional Affairs

**A summary of views received on the
Development of the Hong Kong Special Administrative Region's Political System**

(as at 7 April 2000)

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>1. Dr Anthony B L CHEUNG, Head and Associate Professor, Department of Public and Social Administration, City University of Hong Kong</p> <p>1076/99-00(01)</p>	<p><u>Short-term measures</u></p> <ul style="list-style-type: none"> • CE should interpret BL restrictions on private Member's bills more flexibly. • Major government policy advisory committees should be opened to legislators. • Chief Secretary to hold regular meetings with leaders of major LegCo parties. • Not practical to have overlapping membership between ExCo and LegCo and to appoint party leaders to ExCo because of the rules of confidence and collective responsibility of ExCo. • ExCo Members should be more visible politically. But it is unrealistic to have full-time ExCo Members and undesirable for them to be in charge of policy portfolios. • Appointment of principal officials on political contracts may be introduced by the second CE term. They should be appointed as "ministers" rather than ExCo Members. 		<ul style="list-style-type: none"> • Political parties are not highly relevant to the existing political order which is built on an executive-led system.

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
	<p><u>Long term solutions -</u></p> <ul style="list-style-type: none"> • Both CE and LegCo are to be elected by universal suffrage so that each can claim to derive political mandate and legitimacy from the people and there is a genuine balance of power and authority. (There should not be undue worry of keeping an executive-led system within a democratic form of government as both the British Westminster model and the US-style presidential system feature a strong executive government). • Removal of constitutional restrictions on private Member's bills. • Ways to move to a democratically elected LegCo - <ul style="list-style-type: none"> - All 60 LegCo seats directly elected on a GC basis, or - 30 seats directly elected on a GC basis and the remaining 30 seats on a territory-wide single-list system, or - 30 seats directly elected on a GC basis and 30 FC seats on a universal franchise basis (Each voter is eligible to vote in both one GC and one FC). • To allay concerns of the business community about direct election, the number of LegCo seats can be increased to say 100 or 120 to provide greater chance for elite members of the community to be elected to LegCo under the proportional representation voting system. 		

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
	<ul style="list-style-type: none"> All ministerial posts (Chief Secretary, Financial Secretary, Secretary for Justice and other secretaries, but not Commissioner of Police and similar functional principal official posts stipulated in the BL) should preferably be turned into political appointments whose term should coincide with that of the CE. These appointees should be politically in alliance with CE and assist him full time in leading and directing the government. While appointees can come from both civil service and private sector, civil servants should leave the civil service and be recruited on contract terms. Role of ExCo needs to be re-examined as it might then become redundant. 		
<p>2. Mr YU Tong 1076/99-00(02)</p>	<ul style="list-style-type: none"> Executive-led system of government is ineffective and should be abolished. 	<ul style="list-style-type: none"> Existing electoral system is outdated and should be changed. 	<p>--</p>
<p>3. Hong Kong Christian Institute 1076/99-00(03)</p>	<ul style="list-style-type: none"> CE and principal officials should be accountable to the Legislature. CE should appear before LegCo 6-8 times a year to answer questions. 	<ul style="list-style-type: none"> A fully representative government should be introduced soonest. A referendum on the matter can be conducted by the Government and supervised by the United Nations. CE should be elected by majority vote. Election by universal suffrage in 2002 or 2007 the latest. 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
		<ul style="list-style-type: none"> 60 LegCo Members should be returned by 60 GCs under a "one person, one vote" and simple majority voting system in 2000 or 2004 the latest. 	
<p>*4. Professor Joseph Y S CHENG, Professor of Political Science, City University of Hong Kong</p> <p>1111/99-00(02)</p>	<ul style="list-style-type: none"> A "ministerial system" in the form of a political party or coalition of political parties to control a majority in LegCo is against the principle of "executive-led government" advocated by the Chinese leadership. There is no incentive to reform as the HKSAR government still enjoys a safe majority support in LegCo and there is no danger of constitutional or political crisis. A "ministerial system" of appointing a small number of senior civil servants from the private sector is already an established practice. Another option for managing the civil service which can be introduced at this stage without too much opposition is to offer contracts to top civil servants following the Australian model. This may further justify the gradual implementation of the contract system throughout the civil service. CE can allow pro-government political parties to introduce important bills into LegCo. This is less a challenge to the "executive-led" system of government. Existing ExCo Members are not perceived to be influential. CE can transform ExCo into his cabinet, similar to that of the United States President. 		<ul style="list-style-type: none"> Also gives an analysis of the HKSAR's political development and system.

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
	<ul style="list-style-type: none"> • It is entirely feasible for the Government to avoid any major political reform until 2007 and even then, to limit the reform to a moderate increase in the number of directly-elected seats in LegCo. The "China factor", the difficulties likely to be faced by the executive branch of the government as a result of further democratization, the conservatism of the business community in the territory and the community's lukewarm attitude towards political reform remain to be the obstacles to democratic development. The initial stage of further democratization will probably lead to more problems than solutions to the Government. • A less controversial way to increase the proportion of directly-elected seats in the review in 2007 will be to expand the size of the Legislature to 90 seats, and increase the number of directly elected seats to 60. • Where comes the incentive for political reforms? A community which is mainly interested in the pursuit of stability and prosperity and which lacks a strong sense of civic-mindedness will never make Hong Kong a world-class city. Active political participation among Hong Kong people must be encouraged. 		
5. Miss Eliza W Y LEE, Associate Professor, Department of Government & Public Administration,	<ul style="list-style-type: none"> • Whether the ministerial system can enhance executive leadership, political accountability and political neutrality depends on the kind of political institutions the ministerial system is operated under. The adoption of a ministerial system is an 	--	<ul style="list-style-type: none"> • Also provides information on the political systems in the UK, USA, France and Germany .

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>the Chinese University of Hong Kong</p> <p>1111/99-00(03)</p>	<p>indispensable part of the further development of a democratic system. However, adopting a ministerial system now will not bring about much improvement in the quality of governance immediately. In fact, things may get worse before they get any better.</p> <ul style="list-style-type: none"> • There are three common sources of ministers : political parties, the private sector and the civil service. If a minister system is implemented in HK, the option of appointing civil servants as ministers seems to be the most practicable one. In the long run, the choice of personnel is related to the kind of representative system that will be adopted in Hong Kong. 		
<p>6. Mr K Y SHAW</p> <p>1111/99-00(04)</p>	<ul style="list-style-type: none"> • Non-civil servants appointed as principal officials should be on contract terms. 	<ul style="list-style-type: none"> • CE should be elected by universal suffrage in 2012, using a simple majority voting system. • The earliest time for all LegCo Members to be elected on a GC 	<ul style="list-style-type: none"> • As BL does not have provisions on referendum, LegCo should enact legislation in this respect. Only constitutional issues may become the subject for referendum.

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
		basis will be 2011. The delineation of GC boundaries is open to discussion, and the number of seats in a GC should be in direct proportion to the population of the GC.	
<p>7. Dr LI Pang-kwong, Assistant Professor of Department of Politics and Sociology, Lingnan University & Director of the Research and Survey Programme of Lingnan University</p> <p>1130/99-00(01) & 1133/99-00(01)</p>	<ul style="list-style-type: none"> • Means to improve the relationship between the Executive and Legislature - <ul style="list-style-type: none"> - To endorse party politics; - To co-opt elite members of the community in committees of the government and statutory bodies; - To abolish the voting system on motions and bills introduced by Members; - To readjust the proportion of FC and GC seats in LegCo; and - To return CE by "popular election". 		<ul style="list-style-type: none"> • Results of a survey on HKSAR's political reform conducted by the Research and Survey Programme of the Lingnan University in January 2000 indicate that majority of the respondents support : <ul style="list-style-type: none"> - Discussion on political reform in the community should start as soon as possible; - Election of CE and all LegCo Members by universal suffrage should be implemented as soon as possible; - Persons responsible for formulation of policies (CE,

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
			<p>ExCo Members, principal officials) should resign if they have committed major policy mistakes;</p> <p>- However, respondents generally do not support political appointment of members of political parties to be principal officials. They generally support appointment of civil servants and persons not affiliated with political parties to be principal officials.</p>
<p>8. Hong Kong Institute of Real Estate Administration 1133/99-00(02)</p>	<p>--</p>	<ul style="list-style-type: none"> • FC system has its merits and should be retained. • Democratic development should be introduced progressively in accordance with the timetable of BL. 	<p>--</p>
<p>9. A Hong Kong citizen 1133/99-00(03)</p>	<p>--</p>	<ul style="list-style-type: none"> • Both CE and LegCo Members should be appointed. 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>10. Democratic Party</p> <p>1133/99-00(04)</p>	<p>--</p>	<ul style="list-style-type: none"> • All LegCo Members to be directly elected in 2004. In the absence of direct election, "one person, one vote" system is the most simple and effective voting system. However, the proportional representation system is acceptable if direct election is introduced in 2004. • CE to be elected by universal suffrage in 2002. • Amendments should be made to the Basic Law as soon as possible to allow election of CE and LegCo Members by universal suffrage. 	<ul style="list-style-type: none"> • Reference is also made to surveys conducted by the Democratic Party in 1998 and 1999. The results indicate that - <ul style="list-style-type: none"> - 65% of the respondents support the return of CE by direct election in 2002 (1998 survey); and - 65% of the respondents support LegCo Members to be directly elected in 2000 (1999 survey).
<p>11. Citizens Party</p> <p>1141/99-00(01)</p>	<p>--</p>	<ul style="list-style-type: none"> • HKSAR's political system requires a comprehensive reform rather than changes made on a piece-meal basis. • Election of CE and all LegCo Members by universal suffrage is the ultimate constitutional goal. 	<ul style="list-style-type: none"> • Community-wide discussions on political reform should start now. Constitutional convention is the most effective formal process for the community to achieve a consensus (A paper on "An Open Process for Community Discussion" submitted to the

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
		<ul style="list-style-type: none"> • Shares the public's inclination and advocates that CE should be elected by universal suffrage in 2002. 	Panel is attached to the submission).
<p>12. Hong Kong Association of Property Management Companies</p> <p>1141/99-00(02)</p>	--	<ul style="list-style-type: none"> • Not desirable to elect CE and all LegCo Members by universal suffrage in the next term. • Democratic development should be implemented by means of a gradual and orderly process. 	--
<p>*13. Shun Tak Fraternal Association</p> <p>1141/99-00(03)</p>	<ul style="list-style-type: none"> • In support of the blueprint for the future development of the political system in HKSAR as outlined in the BL. The political structure set out in the BL is designed to preserve the long term prosperity and stability of Hong Kong. • Objects to any proposals to change the political system now. 		--
<p>*14. Pun Yue Industrial & Commercial</p>	<ul style="list-style-type: none"> • In support of the blueprint for the future development of the political system in HKSAR as outlined in the BL. Any radical approach would harm the long-term interests of the community. 		--

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
Fellowship Association Ltd. 1141/99-00(04)	<ul style="list-style-type: none"> Objects to any proposals to change the political system now. 		
15. Ms FOK Chui- wan 1141/99-00(05)	<ul style="list-style-type: none"> Supports democratic development but implementation should be gradual and orderly. 		--
16. 海外雙人 1141/99-00(06)	--	--	<ul style="list-style-type: none"> Makes comments on various provisions of the BL relating to the CE, the Executive Authorities and the Legislature
*17. Kwun Tong Resident Association 1141/99-00(07)	<ul style="list-style-type: none"> Implementation of a "ministerial system" or a "party government" would contravene the BL and result in Hong Kong ruled by the mediocre. Not desirable to amend the BL at this stage. Supports a gradual process of political development and the continuation of an "executive-led" system. 	<ul style="list-style-type: none"> Second term CE should not be elected by universal suffrage. Composition of LegCo before 2007 should follow that outlined in the BL. Not appropriate to decide on when and how should CE and all LegCo Members be elected by universal suffrage at this 	--

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
	<ul style="list-style-type: none"> Can improve the Executive-Legislature relationship by enhancing communication between the two branches and by appointing outside persons as senior principal officials on contract basis. 	<p>point in time. A review should be conducted in 2007. Proposals can be made after the community has arrived at a consensus on the matter.</p>	
<p>18. Messrs TANG Kwan-chi and WONG Man-chong</p> <p>1141/99-00(08) (Revised)</p>	<p>--</p>	<ul style="list-style-type: none"> Election of CE and LegCo Members by universal suffrage should only be introduced after implementation of 12-year free education. 	<ul style="list-style-type: none"> Also makes comments on the qualifications; terms of office; and allowances of CE and LegCo Members, village representative elections as well as other related issues (constitutional conventions and regulation of political parties).
<p>*19. Mr Anthony K W LAW Lecturer of School of Law, City University of Hong Kong</p> <p>1155/99-00(02)</p>	<ul style="list-style-type: none"> Implementation of a "ministerial system" should be considered carefully. Appointment of principal officials on contract basis might affect the morale of civil service. LegCo Members should be appointed as ExCo Members in turn. 	<ul style="list-style-type: none"> CE should be elected by universal suffrage in 2008, using a simple majority voting system Reforms to the existing composition of LegCo should be introduced as soon as possible. The FC system should be reformed or abolished. 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>*20. Dr J T H TANG Head of Department of Politics and Public Administration, the University of Hong Kong 1155/99-00(03)</p>	<ul style="list-style-type: none"> • HKSAR's principal officials (i.e. Secretaries of policy bureaux) can be regarded as "ministers" who are officers entrusted with the management and administration of a division of governmental activities. The major difference between them and ministers of other democratic systems is that most of Hong Kong's "ministers" are also career civil servants. • The difficulties in the Executive and Legislature relationship should not be exaggerated as the two institutions have managed their differences by engaging in the usual political give-and-take. But the Executive will find it increasingly difficult to maintain an executive-led style of governance without risking its political credibility if it does not have institutionalized political support and higher degree of legitimacy. 	<ul style="list-style-type: none"> • In the long run, it is the best solution for Hong Kong people to be able to elect CE and LegCo Members through universal suffrage. • Political experiences all over the world have demonstrated that direct elections are a necessary step in realizing the vision presented by CE in his first policy address. 	<ul style="list-style-type: none"> • Gives an analysis of the HKSAR's political system and a comparison between the political systems in Germany, France and Switzerland.

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>*21. Dr LO Shiu-hing Assistant Professor, Department of Politics and Public Administration, the University of Hong Kong 1155/99-00(04)</p>	<ul style="list-style-type: none"> • The precondition of public discussion on political reform is urgent education of the public on the current political structure and the content of the BL from now to 2006. • Three-pronged approach to gather public views on political reform - <ul style="list-style-type: none"> - The Government should set up an independent committee in 2001 to receive public views on political reform with a view to producing a report in 2005. The committee should decide whether an opinion survey or a referendum should be conducted in 2006 on two key issues : the election of CE by universal suffrage and the scope of democratic reforms in LegCo; - LegCo should consider holding a series of constitutional conventions from 2001 to 2006 to discuss different topics concerning political reform (seven topics proposed in the submission); and - The Government should also conduct in-depth study on the seven topics and submit a report to the independent committee and LegCo. 		<ul style="list-style-type: none"> • Constitutional conventions are important. It is necessary to consider whether constitutional conventions adopted before the handover should be maintained or even relaxed e.g. should the principle of "collective responsibility" be relaxed to allow more people with different political views to join the ExCo. • More powers and responsibilities should be given to members of the District Councils. Allowing District Council members to be "ministers" in the 18 districts will train their political leadership from now to 2006.
<p>22. Hong Kong Christian Council 1211/99-00(01)</p>	<p>--</p>	<ul style="list-style-type: none"> • Supports the election of CE by universal suffrage as early as possible under the parameters of the BL. 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>*23. Hong Kong Professional Teachers' Union</p> <p>1284/99-00(01)</p>	<ul style="list-style-type: none"> • Constitutional development is closely related to the pace of democratization which is subject to restrictions under the BL. If there is a general public call to increase the pace of democratization in Hong Kong, the HKSAR Government should have the determination to discuss with the Central Government about amending the BL in this respect. • A pre-requisite for considering the implementation of a ministerial system is the election of CE by universal suffrage. • There will be no true accountability of the Executive to the Legislature without a directly elected CE and democratization of ExCo. • Election of the CE and all Members of LegCo by universal suffrage should be implemented as soon as possible. 		<p>--</p>
<p>*24. Hong Kong Bar Association</p> <p>1284/99-00(02)</p>	<ul style="list-style-type: none"> • There is no support for "executed-led government" in BL, if this means that the Executive shall prevail over LegCo. In fact, the constitutional framework clearly endorses the principle of separation of powers. BL 64 provides that the HKSAR Government is accountable to LegCo and the situations set out in BL 64 should not be exhaustive of the scope of the accountability. • An effective system of accountability 	<p>Election of LegCo Members</p> <ul style="list-style-type: none"> • BL 68 requires a progress in the formation of LegCo towards election of all Members by universal suffrage. To freeze the composition of LegCo as that in its third term after 2008 will be contrary to BL 68. • The ultimate aim of election of all LegCo Members by universal suffrage must be 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
	<p>of principal officials will require a system of sanction or removal from office when the public has lost confidence in a principal official.</p> <ul style="list-style-type: none"> The public should be widely consulted on any system of Executive Government, be it ministerial or otherwise. Any system adopted must comply with the requirement of accountability to both LegCo and the HKSAR as set out in BL. 	<p>achieved well before the end of the 50-year period guaranteed by BL.</p> <ul style="list-style-type: none"> According to the Human Rights Committee, the electoral system for LegCo does not comply with the ICCPR. The concept of FC, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. Given the long history of direct election in Hong Kong, the interim nature of FC election and taking into account the international obligation under the ICCPR which is incorporated in BL 39, the requirement of progress in the political development in the HKSAR and the ultimate aim of direct election, LegCo should be constituted entirely by geographical constituency election by universal suffrage after the third term. 	

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
		<ul style="list-style-type: none"> • Alternatively, the people of Hong Kong should be given the opportunity to decide on this question, and the most appropriate means to do so is by way of a public referendum. <p>Election of CE</p> <ul style="list-style-type: none"> • Given the short history of election of CE, the question of how the CE should be selected after 2007 is an appropriate subject for a public referendum. • The formation of the nomination committee for the selection of the CE should be open, transparent, participative, broadly representative of all walks of society and with a degree of check and balance. Any proposal must be easy to implement. • All members of the Election Committee should be returned by either direct or indirect election, and at least half of the 	

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
		members should be returned by GC election by universal suffrage.	
25. The Frontier 1405/99-00(01)	<ul style="list-style-type: none"> • The Executive should be accountable to the legislature. • The Legislature should have the power to raise questions on and veto the appointment of secretaries of policy bureaux 	<ul style="list-style-type: none"> • Objects to indirect elections of LegCo Members (such as FC and Election Committee elections) and selection of CE by a Election Committee. • CE and all LegCo Members should be elected by universal suffrage as soon as possible. 	<ul style="list-style-type: none"> • The appointment system of DC members should be abolished. DC members should be elected by universal suffrage. • HKSAR Government should establish a constitutional convention to consult the public on the relationship of the Executive and Legislature, the appointment of principal officials and the pace of democratization as soon as possible, with the ultimate aim of re-enacting the BL to achieve the principles of "Hong Kong people ruling Hong Kong" and "HKSAR exercises a high degree of autonomy".
*26. Christian Joint Committee on Concern for Election	--	<ul style="list-style-type: none"> • CE should be elected by universal suffrage in 2002. 	--

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
1422/99-00(01)		<ul style="list-style-type: none"> • All LegCo members should be elected by universal suffrage before or in 2004. • Amendments should be made to Articles 45 and 68, Annexes I and II of the BL. • HKSAR Government should consult the public on the future development of the political system and announce the timetable of consultation in 2000. The matter should eventually be decided by way of a referendum. 	
<p>*27. Hong Kong Human Rights Monitor</p> <p>1432/99-00(01)</p>	<ul style="list-style-type: none"> • A much wider debate on the form of government to be adopted by HKSAR is required. 	<ul style="list-style-type: none"> • There is no justification for further delay in election of LegCo Members by universal suffrage. • There are strong arguments that a CE who is indirectly elected through leading the majority party in LegCo will be able to form a more stable and effective Government than one who is directly elected. 	<ul style="list-style-type: none"> • Hong Kong should hold a constitutional convention to work out future constitutional arrangements along the lines of the South African Constitutional Convention or the convention on the future of the monarchy held by Australia in 1998.

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
<p>*28. Mr Gordon Y S WU</p> <p>1473/99-00(01)</p>	<ul style="list-style-type: none"> In Hong Kong, one-third of the population pay taxes and subsidize the tax exempt majority. With implementation of a "one-person, one-vote" system, taxpayers would not have their representation in LegCo guaranteed. This situation of "taxation without representation" would jeopardize taxpayers' confidence and threaten Hong Kong's success achieved in the past. Development of democracy should take an evolutionary rather than a revolutionary process, as evidenced by experiences in other countries. Hong Kong should implement the "one-person, one-vote" system step by step in order to achieve both democracy and economy prosperity. 		<p>--</p>
<p>*29. Mr Denis Edwards, Assistant Professor, School of Law</p>	<ul style="list-style-type: none"> Constitutional conventions are important in the context of political accountability. Conventions and customs must be developed under the BL. To comply with the requirement of accountability to the HKSAR under BL 43, CE should appear before LegCo to answer questions on a more regular basis. 	<p>--</p>	<ul style="list-style-type: none"> Makes reference to different political systems.
<p>30. New Territories People's Association</p>	<p>--</p>	<ul style="list-style-type: none"> Election of all Members of LegCo by universal suffrage should be implemented in 	<p>--</p>

Person/body LC Paper No. CB(2)	System of government (Ministerial system, Executive- Legislature relationship)	Election of CE and LegCo Members	Others
1610/99-00(01)		<p>accordance with the principle of gradual and orderly progress as laid down in BL 68. Radical changes without regard to the actual situation in Hong Kong will cause instability to the community and hamper economic growth.</p> <ul style="list-style-type: none">• The present electoral system provides channels for different interests to be represented in the LegCo, hence contributing to stability and the promotion of public participation in political affairs.• The ultimate aim of universal suffrage can only be satisfactorily achieved through a systematic approach to enhance political awareness and build up experience in election matters. It is pre-mature to introduce universal suffrage at this stage.	

Total No. : 30 (excluding one submission which was restricted to Members only)

Note : BL - Basic Law

CE - Chief Executive

ExCo - Executive Council

FC - functional constituency

GC - geographical constituency

HKSAR - Hong Kong Special Administrative Region

ICCPR - International Covenant on Civil and Political Rights

LegCo - Legislative Council

* Also give oral presentation to the Panel

*Systems of Government in Some Foreign Countries :
The Overall Comparison Table*

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Table 1 - Composition and Characteristics of the Legislature

Country	Name(s) of House(s)	Normal term of office	Total membership	Membership: a) Elected b) Appointed	Features of electoral and appointment system
<u>FRANCE</u> Population 58.6 million	Senate	9 years	321	All elected.	Indirect election by electoral college.
	National Assembly	5 years	577	All elected.	Direct election by universal suffrage.
<u>UNITED STATES</u> Population 275 million	Senate	6 years	100	All elected.	Direct vote.
	House of Representatives	2 years	435	All elected.	Single member district system.
<u>UNITED KINGDOM</u> Population 59 million	House of Lords	Life	670	548 life peers, 92 hereditary peers, 26 bishops.	Life peers are appointed by the Monarch. Hereditary peers are elected from among themselves.
	House of Commons	5 years	659	All elected.	Single-member constituencies.

Country	Name(s) of House(s)	Normal term of office	Total membership	Membership: a) Elected b) Appointed	Features of electoral and appointment system
<u>JAPAN</u> Population 127 million	House of Councillors	6 years	252	All elected.	100 members are elected from the whole nation, 152 from 47 prefectures (each constituting an electoral district). Each voter casts two votes, one under the proportional representation system, and one for the voter's electoral district.
	House of Representatives	4 years	500	All elected.	300 members from single-seat districts, 200 members by proportional representation.
<u>GERMANY</u> Population 82.04 million	Bundesrat (Federal Council)	No legislative term	69	All appointed.	Appointed by the 16 states governments; terms are not fixed, but dependent on the office of the state governments.
	Bundestag (Federal Parliament)	4 years	669	All elected.	Direct election, with proportional representation system. Each voter casts two votes-- the first for a constituency candidate and the second for a party list. A party has to win at least 5% of the votes cast or three district mandates to be represented proportionally.

(Table 1)

Country	Name(s) of House(s)	Normal term of office	Total membership	Membership: a) Elected b) Appointed	Features of electoral and appointment system
<u>NEW ZEALAND</u> Population 3.8 million	The House of Representatives	3 years	120	All elected.	Mixed Member Proportional Representation (MMP) electoral system. Under MMP, each voter has two votes - one for a member to represent an electorate and the other for a party which the voter prefers. The overall number of candidates of each party elected to Parliament is determined by the national percentage of votes each party obtains (those parties obtaining less than 5% of the votes or failing to win an electorate seat are disregarded).
<u>SINGAPORE</u> Population 3.89 million	Parliament House of Singapore	Elected Member - 5 years Non-Constituency Members - 5 years Nominated Members - 2 years	93	Elected Member - 83. Non-Constituency Members - 3. Nominated Members - Up to 9.	Elected Member--from single-member constituencies and Group Representation Constituencies. Non-Constituency Members-- appointed from among unsuccessful opposition candidates who have had the highest percentage of votes in their respective constituencies. Nominated Members-- appointed by the President on the recommendation of a Special Select Committee of Parliament.

(Table 1)

Table 2 - Dissolution of Parliament

Country and House(s)	Constitutional provisions / conventions for dissolution (expiry of tenure)	Premature dissolution - by whom, when and how
<u>FRANCE</u> Senate National Assembly	Cannot be dissolved. 5 years.	Not applicable. If the Prime Minister and the Government lose their parliamentary support, they must resign and be replaced by another Government. The President of the Republic may, after consulting the Prime Minister and the presidents of the two chambers, declare the National Assembly dissolved.
<u>UNITED STATES</u> Senate House of Representatives	Congress cannot be dissolved.	Not applicable.

Country and House(s)	Constitutional provisions / conventions for dissolution (expiry of tenure)	Premature dissolution - by whom, when and how
<u>UNITED KINGDOM</u> House of Lords House of Commons	Cannot be dissolved. 5 years.	Not applicable. Prime Minister may ask the Monarch to dissolve Parliament and call for elections, usually some time before the 5-year term is up or when the situation appears to favour the majority party.
<u>JAPAN</u> House of Councillors House of Representatives	Cannot be dissolved. 4 years.	Not applicable. Can be dissolved at any time by the Emperor on the advice and with the consent of the Cabinet.

(Table 2)

Country and House(s)	Constitutional provisions / conventions for dissolution (expiry of tenure)	Premature dissolution - by whom, when and how
<u>GERMANY</u> Bundesrat (Federal Council) Bundestag (Federal Parliament)	Cannot be dissolved. 4 years.	Not applicable. Federal President may dissolve Federal Parliament if it fails to elect a Federal chancellor after the prescribed number of ballots, or if a Federal government motion of confidence is rejected.
<u>NEW ZEALAND</u> House of Representatives	Just prior to expiry of 3-year term.	Calling of new elections is at the discretion of the Government.
<u>SINGAPORE</u> Parliament House of Singapore	Just prior to expiry of 5-year term.	Calling of new elections is at the discretion of the Government.

(Table 2)

Table 3 - Role of Parliament in Appointment of the Executive

Country and House(s)	Role of Parliament in appointing the Head of State	Term of office of Head of State	Role of Parliament in appointing the Government	Whether members of Government must be Members of Parliament
<u>FRANCE</u> Senate National Assembly	None	7 years	The Prime Minister is usually chosen on the basis that he can win a majority of the National Assembly.	Members of Government must give up their parliamentary mandate.
<u>UNITED STATES</u> Senate House of Representatives	If none of the three leading Presidential Candidates receives an absolute majority, the House of Representatives elects one of them to be President, each state voting as one entity	4 years	None.	Members of Government cannot simultaneously be members of Congress.

Country and House(s)	Role of Parliament in appointing the Head of State	Term of office of Head of State	Role of Parliament in appointing the Government	Whether members of Government must be Members of Parliament
<u>UNITED KINGDOM</u> House of Lords House of Commons	None	Hereditary	The Prime Minister must be Member of Parliament who has the ability to command a majority in the House of Commons.	Cabinet Ministers must be Members of Parliament.
<u>JAPAN</u> House of Councillors House of Representatives	Succession to the Imperial Throne shall be in accordance with the Imperial House Law passed by the Diet	Hereditary	The Prime Minister must be a member of the Diet. He is usually the president of the majority party.	At least one half of the Cabinet ministers must be chosen from the Diet.

(Table 3)

Country and House(s)	Role of Parliament in appointing the Head of State	Term of office of Head of State	Role of Parliament in appointing the Government	Whether members of Government must be Members of Parliament
<p><u>GERMANY</u></p> <p>Bundesrat (Federal Council)</p> <p>Bundestag (Federal Parliament)</p>	<p>The Federal President is elected by the Federal Convention composed of members of Federal Parliament and equal number of members elected by state parliaments</p>	<p>5 years</p>	<p>The Federal Chancellor (Head of Govt) is nominated by the Federal President and elected without debate by the Bundestag. Cabinet Members are appointed by the Federal President on the proposal of the Federal Chancellor.</p>	<p>No, but they usually are.</p>
<p><u>NEW ZEALAND</u></p> <p>House of Representatives</p>	<p>None. The Head of State is the Queen (or King) of England. The Governor-General is the personal representative of the Head of State</p>	<p>The Governor-General normally holds office for 5 years</p>	<p>No formal role. The Prime Minister is appointed by the Governor-General. Cabinet Members are appointed by the Governor-General on the advice of Prime Minister.</p>	<p>Yes.</p>

(Table 3)

Country and House(s)	Role of Parliament in appointing the Head of State	Term of office of Head of State	Role of Parliament in appointing the Government	Whether members of Government must be Members of Parliament
<p><u>SINGAPORE</u> Parliament House of Singapore</p>	<p>No. The President is directly elected by the people</p>	<p>6 years</p>	<p>No formal role. The Prime Minister is appointed by the President. Cabinet Members are appointed by the President on the advice of Prime Minister.</p>	<p>Yes.</p>

(Table 3)

Table 4 - Ministerial Responsibility to Parliament

Country and Houses	Responsibility of Government to Parliament collective or individual	Legal basis of governmental responsibility to Parliament	Procedural devices to ensure executive accountability	Circumstances under which Government must resign
<u>FRANCE</u> Senate National Assembly	Collective	The Constitution	Questions, inquiry commissions, information missions, debates and declarations, vote on resolutions, Ombudsman.	When the National Assembly adopts a motion of censure, or rejects a programme or a declaration of general policy of the Government.
<u>UNITED STATES</u> Senate House of Representatives	No direct responsibility	Legislative Re-organisation Act 1946	Committee inquiries and hearings, formal consultations with and reports from the executive, Senate advice and consent for executive nominations and treaties, House impeachment proceedings and Senate trials.	None.

Country and Houses	Responsibility of Government to Parliament collective or individual	Legal basis of governmental responsibility to Parliament	Procedural devices to ensure executive accountability	Circumstances under which Government must resign
<p><u>UNITED KINGDOM</u></p> <p>House of Lords</p> <p>House of Commons</p>	<p>Both collectively and individually responsible to Parliament</p>	<p>By convention</p>	<p>Question time, adjournment, debates, motion debates, debates on motions of no-confidence, select committee system.</p>	<p>If the Government is defeated on an explicit no-confidence motion or a major bill.</p>
<p><u>JAPAN</u></p> <p>House of Councillors</p> <p>House of Representatives</p>	<p>Collective</p>	<p>The Constitution</p>	<p>Question time, committees.</p>	<p>When the House of Representatives passes a no-confidence resolution or rejects a confidence resolution.</p>

(Table 4)

Country and Houses	Responsibility of Government to Parliament collective or individual	Legal basis of governmental responsibility to Parliament	Procedural devices to ensure executive accountability	Circumstances under which Government must resign
<u>GERMANY</u> Bundesrat (Federal Council) Bundestag (Federal Parliament)	Both collectively and individually responsible to the Bundestag	The Basic Law	Permanent committee, committee on inquiry debates, interpellations and questions, Parliamentary Commissioner for the Armed Forces.	Passage of a vote of no confidence by the Bundestag. Passage of a constructive vote of confidence leads to removal of the Federal Chancellor.
<u>NEW ZEALAND</u> House of Representatives	Both	Constitutional convention	Question time, debates, select committees, Officers of Parliament such as Ombudsman.	Must resign or hold an election if defeated on a vote of confidence and matter of confidence.
<u>SINGAPORE</u> Parliament House of Singapore	Collective	Constitution (Art. 24) / Constitutional convention	Question time, motions, select committees, Public Accounts Committee, Government Parliamentary Committee.	Defeat on a vote of no confidence or a major bill in the House.

(Table 4)

Table 5 - Initiation of Legislation

Country and House(s)	Right to initiate legislation	Conditions affecting the right to initiate legislation and special requirements to introduce Bills
<u>FRANCE</u> Senate National Assembly	Prime Minister, Deputies and Senators have the right to initiate bills.	Bills/amendments introduced by members of National Assembly shall not be considered if they reduce public financial resources or increase public expenditures. Final decision on bills/amendments proposed by the Senate rests with National Assembly. Government's bills are given priority.
<u>UNITED STATES</u> Senate House of Representatives	Members of Both Houses.	Bills to raise revenue must originate in the House of Representatives.
<u>UNITED KINGDOM</u> House of Lords House of Commons	Members of Parliament have the right to initiate legislation.	A private member's bill may not be introduced if its primary objective is to require additional government expenditure. If such expenditure is necessarily incidental to the main purposes of a bill, a financial resolution moved by government is required.

Country and House(s)	Right to initiate legislation	Conditions affecting the right to initiate legislation and special requirements to introduce Bills
<u>JAPAN</u> House of Councillors House of Representatives	Prime Minister, Members of both Houses, a standing committee or a special committee.	Members' bills require support of at least 20 members in the House of Representatives or 10 members in the House of Councillors. Members budget amendment bills require support of at least 50 members in the House of Representatives or at least 20 members in the House of Councillors.
<u>GERMANY</u> Bundesrat (Federal Council) Bundestag (Federal Parliament)	Federal Government, Federal Council as a whole, or at least 5% of members of the Bundestag; individuals members of the Bundestag do not have the right to initiate legislation.	In case of a bill envisaging significant public expenditure (so-called finance bills), the Budget Committee of Bundestag is asked to investigate whether the bill is compatible with the financial condition during the First Reading. The Budget Committee's report is submitted directly to the plenary for the Second Reading. Unless the Budget Committee proposes a recommendation to cover such expenditure, the bill could not be adopted.
<u>NEW ZEALAND</u> House of Representatives	Bills may be introduced by the government and by members of the Parliament.	MPs may propose legislation requiring expenditure, subject to the government's right to exercise a veto if the legislation would have "more than a minor impact" on the government's general economic policies.

(Table 5)

Country and House(s)	Right to initiate legislation	Conditions affecting the right to initiate legislation and special requirements to introduce Bills
<u>SINGAPORE</u> Parliament House of Singapore	Bills may be introduced by the government and by members of the Parliament.	Article 59(2) of the Constitution provides that when provisions of a bill or an amendment are either directly or indirectly for tax collection, require state expenditure involving the Consolidated Fund or are on matters relating to the financial obligations of the Government, the bill may not be introduced unless it is recommended by the President and such recommendation signified by a Minister. However, this does not affect legislation which provides for the imposition or alteration of fines, fees or licensing.

(Table 5)

Table 6 - Regulation of Political Party

Country	Legal Basis	Registration	Party Finance	Public Funding Support
<u>FRANCE</u>	The Constitution and the Electoral Code	Information not available	<p>The Electoral Code restricts the maximum of donations received by each political party to HK\$63,500 per annum per donor, and the maximum of donations to be received by each candidate to HK\$38,100 per donor per election. Any donation higher than HK\$1,270 needs to be made by cheque and be declared.</p> <p>Prohibits receiving donation from trade unions, companies and foreign sources.</p> <p>Statutory ceilings on election expenses.</p> <p>Campaign accounts must be published and submitted to a special government committee.</p>	<p>Tax deductions for donations, with a ceiling set at HK\$63,500 per political party per annum, and HK\$38,100 per candidate per election.</p> <p>Certain media time is provided free for parliamentary groups.</p> <p>Certain election expenses are reimbursed to political parties which won at least 5% of total votes cast.</p>

Country	Legal Basis	Registration	Party Finance	Public Funding Support
<u>UNITED STATES</u>	Nil	Nil	The Federal Election Campaign Act 1974 specifies the contribution limits for election campaigns and has established a matching fund system for Presidential election.	If a candidate for federal office complies with the voluntary spending limit set by the Federal Elections Commission, he is entitled and receive public funds under the Matching Fund System.
<u>UNITED KINGDOM</u>	Registration of Political Parties Act 1998 which will be replaced soon by the Political Parties, Elections and Referendums Bill. The latter has been passed by Parliament already and awaiting Royal Assent	Registration with the Companies House under the Registration of Political Parties Act 1998. Registration of party names and emblems is not compulsory However, under the Political Parties, Elections and Referendums Bill, party registration is mandatory	Under the Political Parties Elections and Referendums Bill, parties will be required to maintain accounts of income and expenditure, and to submit annual statement of accounts to the Electoral Commission. There will be prohibitions on foreign and anonymous donations. Ceilings will be imposed on election campaign expenditure.	Nil.

(Table 6)

Country	Legal Basis	Registration	Party Finance	Public Funding Support
<u>JAPAN</u>	Political Funds Control Law.	Information not available	In 1995, eight parties received a total of HK\$2.07 billion from the government, which amounted to 1/3 to 2/3 of their total revenue.	Parties which win five or more seats in the Diet or which receive more than 2% of the total votes in national election receive government subsidies.
<u>GERMANY</u>	<i>The Basic Law, Article 21</i> <i>The Law on Political Party (LPP)</i>	Must have a written charter and a written programme, a party's executive committee must be elected at least once every two years. Candidates for election must be chosen by secret ballot	The LPP defines what financing is permissible for a political party. Tax deductions; for donations to political parties up to HK\$25,380 for individuals and HK\$50,760 for married couples. All donations over HK\$84,600 must be recorded with donors' names and addresses.	Parties obtain 0.5% of votes in Bundestag or European Parliament or 1.0% in state level elections are eligible for reimbursement of election expenses. HK\$5.5 per vote for the first five million votes, and HK\$4.2 for each vote above. (a) matching contribution from government up to maximum of HK\$25,380 for donation from an individual. (b) matching government contribution at half of membership fee received.

(Table 6)

Country	Legal Basis	Registration	Party Finance	Public Funding Support
<u>NEW ZEALAND</u>	The Electoral Act 1993. The Broadcasting Act 1989	To contest the party vote in the proportional representation electoral system, political parties have to be registered with the Electoral Commission	The Electoral Act contains provisions for regulating party election expenses and disclosure of sources of significant donations. Election expenses of a registered party are limited to HK\$3.84 million if the party produces a party list for election, plus HK\$76,800 for each electorate candidate.	Through allocating election broadcasting funds and time. In 1999, a sum of HK\$8.06 million was shared among eligible political parties.
<u>SINGAPORE</u>	The Societies Act	Through the Registry of Societies	Nil.	Nil.

(Table 6)

Table 7 - Recent Electoral Reform

Country	Year	Electoral Reform
<u>FRANCE</u>	Nil	Nil
<u>UNITED STATES</u>	Nil	Nil
<u>UNITED KINGDOM</u>	1999	<p>Under the European Parliamentary Election Act 1999, Britain is divided into 9 regions, Scotland and Wales each constitutes a single region. Each region returning 4 to 11 Members of European Parliament. Election to European Parliament changed to proportional representation system.</p> <p>In Scotland, a new elected parliament was established in 1999. It has 129 members, elected every 4 years by a combined system of direct voting and proportional representation.</p> <p>In Wales, the 60-member Assembly was elected in 1999 under the same system as in Scotland.</p>

Country	Year	Electoral Reform
<u>JAPAN</u>	1994	<p>Electoral system altered from multi-seat constituency system to a combination of single-seat constituencies and seats allocated through proportional representation.</p> <p>Size of House of Representatives reduced to 500 seats, comprising 300 single-seat constituencies and 200 seats to be determined by proportional representation. A party gains one seat for a minimum 2% of votes cast.</p> <p>Each voter has 2 votes: one for the candidate in a single-seat district, the other for a political party in a regional bloc.</p> <p>Political donations exceeding HK\$3,425 are to be disclosed. Donations amounting to HK\$34,250 annually per private corporation are permitted, to be phased out after 5 years. Restriction on private donations is subsidized by the government under the Political Funds Control Law.</p> <p>Campaign literature limited to only certain kinds of leaflets and posters.</p>
<u>GERMANY</u>	Nil.	Nil.
<u>NEW ZEALAND</u>	1996	<p>Mixed Member Proportional Representation electoral system was introduced in 1996. Each voter has two votes: one for a member to represent the voter and the other for a party which the voter prefers. The overall number of candidates of each party elected to Parliament is determined by the national percentage of votes each party obtains. Minimum requirement to win a Parliamentary seat is 5% of the votes cast. Candidates may stand for election in an electorate and on their party's list. Party votes decide each party's share of Parliamentary seats.</p>

(Table 7)

Country	Year	Electoral Reform
<u>SINGAPORE</u>	1988	Constitution amended to introduce Group Representation Constituencies. Candidates run in teams, not on individual basis. Voters cast their votes for a team of candidates. The team of candidates which secures the highest number of votes collectively becomes Members of Parliament.
	1991	Constitution amended in January 1991 to provide for directly elected President of the Republic. First such President elected in August 1993.

(Table 7)

Table 8 - Constitutional Amendments

Country	Nature of Constitution	Amendment Procedure	Entrenchment
<u>FRANCE</u>	Written constitution of 1958, the Fifth French Republic	Revisions must be passed in identical forms by the National Assembly and Senate of Parliament before being submitted for approval by either a popular referendum or voting by Congress (a joint session of the National Assembly and the Senate) which requires 3/5 majority of votes cast. The President of the Republic, upon the proposal of the Government or Parliament, may submit a referendum that deals with certain prescribed subjects.	No amendment shall be commenced or continued if the integrity of the territory is jeopardized. The republic form of government shall not be the subject of constitutional amendment.
<u>UNITED STATES</u>	Written constitution	May be amended when two-thirds of both houses of the Congress propose amendments or when the congress is requested by two-thirds of the state legislatures to call a constitutional convention. All amendments must then be ratified by three-fourths of the state legislatures or conventions, based on the mode of ratification proposed by the Congress.	No amendment may deprive any state of equal suffrage in the Senate without its consent.

Country	Nature of Constitution	Amendment Procedure	Entrenchment
<u>UNITED KINGDOM</u>	No written constitution. Made up of statute law, common law, conventions, customs and traditions. Influenced by European Union laws and European Convention on Human Rights	May be altered by simple majority vote by Parliament, judgements by courts, international agreements, and by accepted changes in customs and traditions.	Not applicable.
<u>JAPAN</u>	Written constitution	Amendments are to be initiated by a two-thirds vote of the members of each house of the parliament and then submitted to the people for approval by a majority of all votes cast.	Nil.
<u>GERMANY</u>	Written constitution, known as the Basic Law	Must be approved by at least two-thirds of the members of each house of the legislature.	Prohibits amendments to first twenty articles and any change that would affect the division of the federation into states and the participation of the states in legislation.

(Table 8)

Country	Nature of Constitution	Amendment Procedure	Entrenchment
<u>NEW ZEALAND</u>	No written constitution. Make up of Acts of Parliament, prerogative instruments, decisions of the Courts, customary international law, the law and custom of Parliament and conventions of the constitution.	May be altered by simple majority of Parliament. The only exception is section 268 of the Electoral Act 1993, which requires a referendum of a special majority (75%) of the House of Representatives to alter certain sections (such as method of voting) of the Act.	Nil.
<u>SINGAPORE</u>	Written constitution. The Constitution of the Republic of Singapore.	By more than 2/3 of the total number of the elected MPs, a referendum is required for amendments to Part 3 of the Constitution, Protection of the Sovereignty of Singapore.	Nil.

(Table 8)

**Progress Report on the
Motion Debate on Political Reforms
(Position as at 9 March 2000)**

As the Secretary for Constitutional Affairs indicated in his speech delivered during the motion debate on 12 January, we will study the various systems of government currently adopted in other parts of the world and evaluate their strengths and weaknesses to see whether we can draw any inference from them.

Constitutional Affairs Bureau

March 2000

[p4c080]

**Motion Debate on
"Development of the HKSAR's Political System"
Held on 14 June 2000**

Follow-up Action Taken by the Administration

The Report on "Development of the Political System of the Hong Kong Special Administrative Region" prepared by the Panel on Constitutional Affairs of the first term Legislative Council (LegCo) covered four main areas, namely system of government, relationship between the executive authorities and the legislature and elections of the Legislative Council as well as the Chief Executive.

2. We will, in consultation with relevant policy bureaux, study the recommendations in the Report.

3. On system of government, we will, after the LegCo elections in September 2000, study the various systems of government currently adopted in other parts of the world, with a view to identifying a system that best suits Hong Kong's interests. We also intend to introduce the Chief Executive Election Bill into the LegCo in mid 2001.

Appendix VI

(Translation)

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← CB 540

(13.6.2001)

Hon Martin LEE (Oral Reply)

In its Concluding Observations, the United Nations Committee on Economic, Social and Cultural Rights pointed out that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in the Hong Kong Special Administrative Region ("SAR"). In this connection, will the Government inform this Council:

- (a) of its plan to improve the method for forming the Legislative Council in order to achieve "the ultimate aim" of "the election of all the members of the Legislative Council by universal suffrage", as stipulated in Article 68 of the Basic Law; and
- (b) whether, prior to the submission of the second report on the Hong Kong SAR to the Committee in 2003, it will conduct public consultation on the direct election of all members of the Legislative Council on a one-person-one-vote basis, the voting procedure of the Legislative Council and the provisions of Article 74 of the Basic Law regarding the introduction of bills by Members of the Legislative Council, and submit the outcome of the consultation to the Committee for its reference; if so, of the timetable for the consultation?